

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2526 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1,2 and 4 Yes; 3 and 5 No

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VISHNUPRASAD D BRAHMBHATT

Versus

MS PATHAN AND/OR SUCCESSOR IN OFFICE

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Appearance:

Mr.Maganbhai Barot for

MR YV BRAHMBHATT for Petitioner

MR ANANT S DAVE for Respondent Nos.1 & 2

Ms. Katha Gajjar,learned A.G.P.for Respondent Nos. 3, 4

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CORAM : MR.JUSTICE J.R.VORA

Date of Order: 02/07/98

ORAL JUDGEMENT

Heard learned counsel.

This petition is filed by the petitioner stating that he is Sarpanch of Matar Gram Panchayat and he has received one notice from D.D.O. which is dated 24.3.98

to the effect that the petitioner is prima facie involved in an offence of moral turpitude and that why the petitioner be not suspended. Against this notice, this petition is filed to quash and set aside the show cause notice.

Mr. Barot, learned advocate, on behalf of the petitioner has vehemently argued that F.I.R., on the basis of which this notice is issued, does not disclose the name of the petitioner as an accused and that the F.I.R. does not disclose any offence of moral turpitude. It was urged that the petitioner is not at all involved in any criminal offence as alleged in the notice and, therefore, the notice was bad in law, violative of fundamental rights of the petitioner. On the other hand, Mr. Anant S. Dave urged that at this stage, the stage is interlocutory and it could not be said that any fundamental right of the petitioner is infringed so as to file this petition under Article 226 of the Constitution.

Obviously and admittedly this petition is filed on a show cause notice issued by the D.D.O. which is dated 24.3.98. Notice states that the petitioner prima facie appears to have been involved in an offence of moral turpitude. The fact constituting the so called offence is publishing a pamphlet which is also placed on record. It clearly appears that the stage is quite premature. The authority competent to take any action against the petitioner is still to take a decision whether the petitioner is involved in any criminal prosecution which can be labelled as an offence of moral turpitude. At this stage the D.D.O. has issued a show cause notice giving an opportunity to the petitioner to explain certain circumstances. From this fact, it could not be said that the authority concerned has acted malafide, because a final decision in the matter under S.59 of the Panchayats Act is neither taken nor the action for suspension of the petitioner is guaranteed to be taken. It may happen that on a representation of the petitioner, the show cause notice may be filed by concerned authority. In this set of circumstances, there is no breach or violation of fundamental rights of the petitioner so as to entitle him to have the extraordinary remedy under Article 226 of the Constitution.

The learned advocate for the petitioner has relied on a decision of this court in the matter of Thakorbhai Bhagabhai v. D.D.O. Surat and another as reported in 1980 GLR 966 wherein it has been held that in order to attract the provisions, the criminal proceedings involving moral turpitude must have been instituted

against the officer of the Gram Panchayat. The other decision is in the matter of Narabhai Veljibhai Chaudhary v. R.S. Vaghela and others as reported in 1997 (1) GLR 599 wherein the Court has observed that whether the act constitute an offence of moral turpitude there cannot be any straightjacket formula. A Sarpanch cannot be suspended just on institution of criminal case and facts and circumstances had to be seen. In that case the suspension order was not justified. The third decision which was relied on behalf of the petitioner is in the matter of Ahmedabad Cotton Mfg. Co. Ltd. v. Union of India as reported in 1977 G.L.R.714, which is a decision of Full Bench wherein the objection raised that existing available remedy was not exhausted was negatived holding that the remedy provided was not efficacious and as, the action of insistance on complying with the Trade Notice is challeged is ex facie without jurisdiction and, therefore, the fetter created under Article 226(3) does not come into operation.

Considering the above mentioned three cases, it clearly appears that none of the case helps the present petitioner. In two cases i.e. in the case of Narabhai V. Chaudhari (Supra) and Thakorebhai Bhagabhai (Supra) the Government had already passed the orders of suspension and in the third case i.e. in the Full Bench decision in the case of Ahmedabad Cotton Mfg. Co.Ltd.(Supra) it has been held that there was no alternative efficacious remedy. In the present case, only a show cause notice is issued. The authority competent to take action has yet to take any action. It is yet to be decided that a criminal proceeding against petitioner involving moral turpitude is instituted and efficacious remedy is available to the petitioner under S.59(1) and (3) of the Panchayats Act, if such action are taken against petitioner at all and therefore it would not be proper for this court to interfere at this juncture under the extra ordinary powers under Article 226 of the Constitution. The Court is in complete agreement with the argument of the learned counsel for the respondents Nos.1 and 2 that the petition is premature. It cannot be said that merely because a show cause notice is issued, any fundamental right is violated. Fundamental right is infringed when the competent authority takes action under the Panchayats Act and acts malafide or allegedly acts against the statutory provisions. In this view of the matter, this petition stands dismissed. Notice is discharged. Interim relief stands vacated. No order as to costs.

Mr. Barot on behalf of the petitioner at this

stage submits that this Court has granted ad interim relief in terms of para 7(C) vide order dated 31.3.98 and the same may be continued for some time. In the facts and circumstances of this case, this ad interim relief is extended till 10.7.98.

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